

MASTER POWER PURCHASE AND SALE AGREEMENT

AMENDED AND RESTATED COVER SHEET

This *Master Power Purchase and Sale Agreement* (Version 2.1; modified 4/25/00) ("*Master Agreement*") is made as of the following date: February 6, 2001 ("Effective Date") as amended and restated on February __, 2001. The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, any designated collateral, credit support or margin agreement or similar arrangement between the Parties, any other Performance Assurances and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name: Calpine Energy Services, L.P. ("CES" or "Party A")

Name: State of California Department of Water
Resources separate and apart from its powers and
responsibilities with respect to the State Water
Resources Development System ("DWR" or
"Party B")

All Notices: Calpine Energy Services, L.P.
50 West San Fernando Street
San Jose, California 95113
Attn: General Counsel

All Notices: California Department of Water Resources
1416 Ninth Street
Sacramento, California 95814
Attn: Office of the Chief Counsel

with a duplicate copy to:

Street: 700 Louisiana Avenue, Suite 2700

Street: 1416 Ninth Street

City: Houston, TX Zip: 77002

City: Sacramento, CA Zip: 95814

Attn: Contract Administration
Phone: (713) 830-8608
Facsimile: (713) 830-8740
Duns: 11-271-0876
Federal Tax ID Number:

Attn: Executive Manager, Power Systems
Phone: (916) 653-5913
Facsimile: (916) 653-0267
Duns: _____
Federal Tax ID Number:

Invoices:

Attn: Power Accounting
Phone: (713) 830-2000
Facsimile: (713) 830-8740

Invoices:

Attn: Contracts Payable
Phone: (916) 653-6404
Facsimile: (916) 654-9882

Scheduling:

Attn: Scheduling
Phone: (713) 830-8642
Facsimile: (713) 830-8722

Scheduling:

Attn: Chief Water and Power Dispatcher
Phone: (916) 574-2693
Facsimile: (916) 574-2569

Payments:

Attn: Power Accounting
Phone: (713) 830-2000
Facsimile: (713) 830-8740

Payments:

Attn: Cash Receipts Section
Phone: (916) 653-6892
Facsimile: (916) 654-9882

Wire Transfer:

BNK: Union Bank of California
ABA:
ACCT:

Wire Transfer:

BNK:
for: Department of Water Resources
ABA:
ACCT:

Credit and Collections:

Attn: Corporate Credit Manager
Phone: (408) 995-5115
Facsimile: (408) 995-0505

Credit and Collections:

Attn: Deputy Controller
Phone: (916) 653-6148
Facsimile: (916) 653-8230

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: Risk Management Counsel
Phone: (713) 830-2000
Facsimile: (713) 830-8740

with copy to:

Attn: General Counsel
Phone: (408) 995-5115
Facsimile: (408) 975-4648

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: Deputy Controller
Phone: (916) 653-6148
Facsimile: (916) 653-8230

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff	Not Applicable	Dated	N/A	Docket Number	N/A
Party B Tariff	Not Applicable	Dated	N/A	Docket Number	N/A

Article Two

Transaction Terms and Conditions ☒ Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive ☐ Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

- ☐ Cross Default for Party A: N/A
- ☐ Party A: N/A Cross Default Amount: \$ N/A
- ☐ Other Entity: N/A Cross Default Amount: \$ N/A
- ☐ Cross Default for Party B: N/A
- ☐ Party B: N/A Cross Default Amount: \$ N/A
- ☐ Other Entity: N/A Cross Default Amount: \$ N/A

5.6 Closeout Setoff

- ☐ Option A (Applicable if no other selection is made.).
- ☐ Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: _____
- ☒ Option C (No Setoff)

Article 8

8.1 Party A Credit Protection:

Credit and Collateral Requirements

(a) Financial Information:

- ☐ Option A
- ☐ Option B Specify:
- ☒ Option C Specify: (1) All financial reports of any kind distributed to the holders of any bonds issued by DWR under Water Code Section 80130 et seq. (the “Bonds”). (2) Annual audit, annual budget and all financial information sent to any seller under a power purchase agreement; Party B shall use reasonable commercial efforts to periodically prepare and make available to all sellers under power sales

agreements, but not more frequently than quarterly, financial information reasonably intended to apprise all such sellers of the financial condition of the Fund.

(b) Credit Assurances:

- ☒ Not Applicable
☐ Applicable

(c) Collateral Threshold:

- ☒ Not Applicable
☐ Applicable

If applicable, complete the following:

Party B Collateral Threshold: _____; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ N/A

Party B Rounding Amount: \$ N/A

(d) Downgrade Event:

- ☒ Not Applicable
☐ Applicable

If applicable, complete the following:

☐

☐ Other:
Specify: _____

(e) Guarantor for Party B: N/A

Guarantee Amount: \$ N/A

8.2 Party B Credit Protection:

(a) Financial Information:

- ☐ Option A
☒ Option B Calpine Corporation
☐ Option C Specify:

(b) Credit Assurances:

- ☒ Not Applicable
☐ Applicable

(c) Collateral Threshold:

- ☒ Not Applicable
☐ Applicable

If applicable, complete the following:

Party A Collateral Threshold: _____; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ N/A

Party A Rounding Amount: \$ N/A

(d) Downgrade Event:

- ☒ Not Applicable
☐ Applicable

If applicable, complete the following:

- ☐
☐ Other:
Specify: _____

(e) Guarantor for Party A: Calpine Corporation

Guarantee Amount: To be determined.

Article 10

Confidentiality

☒ Confidentiality Applicable

If not checked, inapplicable.
See Cover Sheet, "Other Changes" Section (m).

Schedule M

- ☐ Party A is a Governmental Entity or Public Power System
☒ Party B is a Governmental Entity or Public Power System
☐ Add Section 3.6. If not checked, inapplicable
☐ Add Section 8.4. If not checked, inapplicable

SECTION 8.4 MUST BE UNCHECKED

Other Changes

Specify, if any: The following changes shall apply:

(a) **Definitions.** (1) Sections 1.6, 1.24, 1.28, 1.33, 1.34, 1.35, 1.36, 1.43, 1.44, 1.48 and 1.56 are amended by deleting the text in each of such sections and substituting therefor "[Intentionally omitted.]"

(2) Section 1.11 is amended by adding the following sentence at the end of the current definition: "The Non-Defaulting Party shall use commercially reasonable efforts to mitigate or eliminate these Costs."

(3) Section 1.59 is amended by changing "Section 5.3" to "Section 5.2."

(4) Sections 1.62 through 1.68 are added to Article One as follows:

1.62 "**Fund**" means the Department of Water Resources Electric Power Fund established by Section 80200 of the Water Code.

1.63 "**Market Quotation Average Price**" shall mean the average of the good faith quotations solicited from not less than three (3) Reference Market-makers; provided, however, that the Party soliciting such quotations shall use commercially reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined disregarding the highest and lowest quotations.

1.64 "**Market Value**" shall have the meaning set forth in Section 5.3.

1.65 "**Per Unit Market Price**" means the applicable price per MWh determined in accordance with Section 5.3.

1.66 "**Reference Market-maker**" means any marketer, trader or seller of or dealer in firm energy products whose long-term unsecured senior debt is rated BBB or better by Standard & Poor's and Baa2 or better by Moody's Investor Services.

1.67 "**Replacement Contract**" means a contract having a term, quantity, delivery rate, delivery point and product substantially similar to the remaining term, quantity, delivery rate, Delivery Point and Product to be provided under a Transaction.

1.68 "**Trust Estate**" means all revenues under any obligation entered into, and rights to receive the same, and moneys on deposit in the Fund and income or revenue derived from the investment thereof.

(b) Transactions. All Transactions shall be in writing and this agreement may not be orally amended or modified, including by Recording pursuant to Section 2.5.

(c) Governing Terms. Section 2.2 is amended by adding the following sentence at the end of the current section:

"Notwithstanding the foregoing, each Transaction shall be treated as a stand-alone Transaction and accordingly (a) provisions in the Master Agreement referring to offsetting or netting multiple Transactions shall not be applicable, and (b) an Event of Default or Potential Event of Default with respect to a Transaction shall not independently constitute an Event of Default or Potential Event of Default under any other Transaction. No provision of any Confirmation entered into pursuant to Section 2.4 with respect to a Transaction shall affect any other Transaction."

(d) Condition Precedent. Section 3.7 is added to the Agreement as follows:

3.7 Condition Precedent. (a) The Parties acknowledge that the creditworthiness of each Party is critical to the other Party's decision to enter into this Agreement and that, because the structure of and agreements relating to the Fund and the Bonds have not yet been developed, Party A is unable to review or approve Party B's creditworthiness. Therefore, Party A's obligations under this Agreement and all Transactions thereunder are subject to and conditioned upon Party A being satisfied, in its sole discretion, prior to the later of (i) July 1, 2001 or (ii) 30 days after Party A has received a complete set of the final documents and agreements relating to the Special Fund and the Bonds (the "Determination Date"), that adequate provisions have been made to assure Party A of full payment under the terms of this Agreement and the related Transactions for the full term of the Agreement and related Transactions, including, if Party A considers it necessary, the establishment of sufficient security or Performance Assurances for such payment obligation; provided, however, that if the Determination Date has not occurred prior to the commencement of deliveries of any Product under any Transaction, Party A shall have the right to begin delivering such Product(s) pursuant to such Transactions(s) subject to and without prejudice to Party A's right to terminate this Agreement and all Transactions thereunder as provided in this Section 3.7 prior to the Determination Date, and Party B shall remain liable for payment for such Product(s) as have been delivered prior to termination notwithstanding such termination. Without limiting the generality of the foregoing, Party A may consider such provisions and payment assurances inadequate if (1) the Bonds are not issued in an amount which, in Party A's judgment in its sole discretion, is sufficient to provide, together with other revenues reasonably expected to be available, an adequate fund for payment of amounts due under this Agreement and under any other power purchase agreements between DWR and other parties which will rely on the Special Fund for repayment and for the repayment of the Bonds, (2) the Bonds are not rated at least A- by Standard & Poor's and A3 by Moody's Investor Services, (3) the structure of and agreements relating to the Fund and the Bonds are not consistent with the requirements of this Agreement, (4) the agreements relating to the Fund or the Bonds do not provide adequate protections against future impairment of the Fund and Party B's ability to pay or perform its obligations hereunder and under all Transactions, or (5) Party A concludes in its sole discretion that the waiver of sovereign immunity contained in Section (q) – Schedule M, clause (5) does not afford Party A adequate remedies to enforce its rights under this Agreement. The parties agree to communicate and exchange information with respect to the structure of and agreements relating to the Special Fund and the Bonds as they are developed in order to facilitate the review and approval process. Party A shall notify Party B in writing of its satisfaction or lack of satisfaction with the foregoing matters prior to the Determination Date. If Party A is not so satisfied prior to the Determination Date, it may terminate this Agreement on thirty (30) days prior written notice to Party B given at any time prior to the Determination Date. Upon any such termination, neither Party shall have any further liability to the other Party under this Agreement arising after the date of termination.

(b) The obligations of Party A under this Agreement with respect to any Transaction are expressly subject to and conditioned on the approval of such Transaction by the Board of Directors of the Guarantor for Party A.

(e) Events of Default. The following language shall be deleted from Section 5.1(g): “, or becoming capable at such time of being declared.”

(f) Declaration of an Early Termination Date and Calculation of Termination Payment.

(1) Section 5.2 is replaced in its entirety by the following: "If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date (“Early Termination Date”) to liquidate and terminate a Transaction (each referred to as a “Terminated Transaction”) between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall be entitled to a payment upon termination of a Transaction as the result of an Event of Default (the “Termination Payment”) which shall be the aggregate of the Market Value and Costs calculated in accordance with Section 5.3 which shall be paid no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date, together with interest on such Termination Payment from the date of such notice through the date of payment at an annual rate equal to the “Prime Rate” published in the Wall Street Journal under “Money Rates” (as such rate may be adjusted from time to time), but not in excess of the maximum rate permitted by law. Prior to receipt of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party."

(2) The following shall be added to the end of Section 5.2 (as amended by clause (1) immediately above): "Notwithstanding the other provisions of this Agreement, if the Non-Defaulting Party has the right to liquidate or terminate a Transaction under this Agreement under the provisions of this Article 5 because the Defaulting Party either (a) is the subject of a bankruptcy, insolvency, or similar proceeding, or (b) applies for, seeks, consents to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets, then such Transaction shall automatically terminate, without notice, as if the Early Termination Date was the day immediately preceding the events listed in Section 5.1."

(3) Section 5.3 is replaced in its entirety by the following:

"5.3. Termination Payment Calculations. The Non-Defaulting Party shall calculate the Termination Payment as follows:

- (a) Market Value shall be (i) in the case Party B is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under a Replacement Contract based on the Per Unit Market Price, and (B) payments under this Agreement, or (ii) in the case Party A is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under this Agreement, and (B) payments under a Replacement Contract based on the Per Unit Market Price, in each case using the Present Value Rate as of the time of termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The "Present Value Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the average remaining term of this Agreement. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.
- (b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, the settlement prices on established, actively traded power exchanges, other bona fide third party offers and other commercially reasonable market information.
- (c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is an actively traded market for such Replacement Contract or if the Non-Defaulting Party is unable to obtain reliable quotations from at least three (3) Reference Market-makers, the Non-Defaulting Party shall use the methodology set forth in paragraph (b).
- (d) In no event, however, shall a party's Market Value or Costs include any penalties, ratcheted demand charges or similar charges imposed by the Non-Defaulting Party.

If the Defaulting Party disagrees with the calculation of the Termination Payment and the parties cannot otherwise resolve their differences, the calculation issue shall be submitted to dispute resolution as provided in Section 10.12 of this Agreement. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date."

(4) Sections 5.4, 5.5, 5.6, 6.7 and 6.8 are amended by deleting the text in each of such sections and substituting therefor "[Intentionally omitted.]"

(g) Grant of Security Interest/Remedies. The following language shall be deleted from the beginning of the second sentence of Section 8.3: the phrase "or deemed occurrence".

(h) Governmental Charges. Add the following to Section 9.2 after the second sentence in that section: "In addition to any other amounts payable by Party B under the foregoing provisions of this Section 9.2, if Party A can demonstrate that its cost of service for any Transaction under this Agreement has been increased by an aggregate amount of \$0.50 per MWh or more since the Effective Date as a result of any governmental action or actions by the United States, the State of California or any officer, agency, instrumentality or subdivision of either of them, including any city, county or other municipality, Party B shall pay (or promptly reimburse Party A for) all such increased costs of service for such Transaction in excess of \$0.50 per MWh in the aggregate for the remainder of the Delivery Period for such Transaction. For the purpose of the preceding sentence, governmental action that increases the cost of service for this Agreement shall include (a) new taxes (including the imposition or increase in rate or amount thereof) or (b) the imposition of other unanticipated costs and charges caused by governmental action."

(i) Representations and Warranties.

- (1) Create subsection (a) to Section 10.2, which shall be the language currently contained in Section 10.2, and create a new subsection (b), which shall read as follows:

“On the Effective Date and the date of entering into each Transaction, Buyer represents and warrants to Seller that, except for sales or exchanges of blocks of surplus energy which exceed the amount necessary to supply Buyer’s retail end use customers, for the duration of this Agreement, the Product(s) purchased hereunder will either be sold directly to retail end use customers or be resold only to an entity which shall directly deliver the Product(s) for consumption by retail end use customers.”

(2) The following language shall be deleted from the new subsection (a) to Section 10.2: (i) the phrase “or any of its Affiliates” in Section 10.2(vi), and (ii) the phrase “or Potential Event of Default” in Section 10.2(vii).

(3) Party B shall not be deemed to make the representations set forth in clauses (ix) and (xi) of the new subsection (a) of Section 10.2.

(j) Indemnity. The phrase "To the fullest extent allowed by law" is added at the beginning of the first two sentences of Section 10.4, and the following sentence is added at the end of Section 10.4: "To the extent that either Party is excused by law from the foregoing indemnity obligations, the other Party shall also be excused to the same extent."

(k) Assignment. (1) The phrase "(A) if the guaranty provided by the Guarantor remains in effect with respect to such assignee or (B)" is inserted in clause (ii) of Section 10.5 after the phrase "transfer or assign this Agreement to an affiliate of such Party."

(2) Insert the phrase "(or, with respect to clause (iv), Party B)" after the phrase "provided, however, either Party" in the third line of Section 10.5, insert the phrase “(except with respect to clause (iv), for which consent will be required to the extent provided therein)” after “without the consent of the other Party” on the third and fourth lines of Section 10.5, and add the following clause (iv) in the first proviso in Section 10.5: "or (iv) transfer and assign this Agreement to (A) another governmental entity created or designated by law for the purpose of carrying out Party B's obligations under this Agreement and similar agreements with other sellers of power to Party B and under the Bonds if Party B demonstrates to Party A's reasonable satisfaction that such transfer will not adversely affect Party A's right to or likelihood of payment and will not otherwise have a material adverse impact on Party A, or (B) a privately owned utility company if (1) such company's long term senior unsecured indebtedness is rated at least A by Standard & Poor's and A2 by Moody's Investors Services, (2) such assignment is made as part of a general assignment of all or substantially all of the power purchase agreements relying on the Fund to one or more privately owned utility companies, and (3) Party A is satisfied in its sole discretion that such assignment will not have a material adverse effect on the performance of Party B's obligations hereunder or on any federal, state or local regulatory or other governmental requirements relating to Party A;"

(3) Add the following proviso to the end of Section 10.5: ";provided, further, however, that in the event this Agreement is pledged or assigned to a bond trustee pursuant to clause (i) as collateral for bonds issued by Party B, such bond trustee shall not be required to agree in writing to be bound by the terms and conditions hereof, but any person or entity that succeeds to Party B's rights with respect to the Fund or that acquires Party B's rights to receive Products under this Agreement, whether by foreclosure or otherwise, shall be bound, and shall be required to agree in writing to be bound, by the terms and conditions of this Agreement."

(l) Governing Law. In Section 10.6, “New York” shall be replaced with “California”.

(m) Confidentiality. The following proviso is added to the end of the first sentence in Section 10.11: "provided, further, that either party may publicly disclose the type and quantity of Product(s), the pricing of such Product(s) and the term of the Agreement or any Transaction."

(n) Dispute Resolution. Add a new section is added to Article 10 as follows:

10.12 Dispute Resolution.

(a) If a dispute shall arise between the Parties relating to the interpretation of this Agreement or to performance of the Transaction under it, the Party desiring resolution of the dispute shall notify the other Party in writing. The notice shall set forth the matter in dispute in reasonable detail and a proposed solution.

(b) The Parties shall attempt to resolve any dispute within 10 calendar days after delivery of the written notice referred to above. Any disputes not so resolved shall be referred by each Party to an officer (or the officer's designee) for resolution. If the Parties fail to reach an agreement within 10 days after such referral, each Party shall have the right to pursue any and all remedies provided in this Agreement and as afforded by law.

(c) The existence of any dispute or controversy under this Agreement or the pendency of the dispute settlement or resolution procedures set forth herein shall not in and of themselves relieve or excuse either Party from its ongoing duties and obligations under this Agreement.

(o) Change in Rates. Add a new section is added to Article 10 as follows:

10.14 Changes in Rates. The terms and conditions and the rates for service specified herein shall remain in effect for the term of this Agreement and the related Transaction and shall not be subject to change through application to the Federal Energy Regulatory Commission by either Party, including the State of California and any of its agencies, pursuant to the provisions of Section 205 or 206 of the Federal Power Act. Each Party expressly agrees that it will not make any filings under either Section 205 or Section 206 of the Federal Power Act to revise this rate schedule. If, however, a third party should make such a filing, the proponent will be required to meet the public interest standard as expressed in the *Mobile-Sierra* doctrine under Section 206 of the Federal Power Act and *Potomac Elec. Power Co. v. FERC*, 210 F.3d 403, 409-10 (D.C. Cir. 2000). Each Party expressly retains its rights to protest or otherwise challenge any such revisions or filings.”

(r) **General.** The phrase "Except to the extent herein provided for," shall be deleted from the fourth sentence of Section 10.8, and the phrase "and this agreement may not be orally amended or modified, including by Recording pursuant to Section 2.5" shall be added to the end of such fourth sentence.

(p) **Additional Provisions.** New Sections 10.15 and 10.16 are added to Article 10 as follows:

10.15. No Dedication of Facilities. Party A's undertaking hereunder shall not constitute the dedication of the electric system or any portion thereof of Party A to the public or to the other Party, and it is understood and agreed that any undertaking under this Agreement by Party A shall cease upon the termination of Party A's obligations under this Agreement. The foregoing provision shall not impair the Parties' ability to enter into Transactions providing for the delivery of "Unit Firm" or "System Firm" Products.

10.16. No Retail Services; No Agency. (a) Nothing contained in this Agreement shall grant any rights to or obligate Party A to provide any services hereunder directly to or for retail customers of any person.

(b) In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party.

(q) **Schedule M.** Schedule M shall be amended as follows:

(1) In Section A, "Act" will mean those sections of the California Water Code authorizing, establishing and empowering the Department of Water Resources, including Division 27 (beginning with Section 80000) of the Water Code, and the definition of "Special Fund" shall be replaced by the following: "Special Fund" means the Fund.

(2) In Section A, the definition of "Governmental Entity" shall be amended by replacing the current language with the following: "Governmental Entity" means the State of California Department of Water Resources.

(3) In Section B, the following phrase is added before the phrase "in its governmental capacity": "or by the State of California or any of its agencies, departments, instrumentalities or subdivisions".

(4) Delete all references to "Public Power System" in Schedule M.

(5) In Section D, delete Section 3.5 and replace it with the following:

“3.5 No Immunity Claim. California law authorizes suits based on contract against the State or its agencies, and Party B agrees that it will not assert any immunity it may have as a state agency against such lawsuits filed in state court.”

(6) In Section G, specify that the laws of the State of California will apply.

(7) Add a new Section H, which shall read as follows:

"3.8 No Limitation or Alteration of Benefits and Burdens. Section Party B covenants and agrees that it will not limit or alter the economic benefits and burdens conferred on Party A related to its performance under this Agreement or in any way impair the rights and/or remedies of the Parties hereto until all performance obligations under this Agreement are fully met and discharged. The foregoing shall not be construed as depriving the State of California of its power to levy taxes or to regulate and control the generation, sale, and use of power, electric energy, or other services generally; provided, however, that any new or additional taxes or other Governmental Charges shall be subject to Section 9.2.”

(8) Add a new Section I, which shall read as follows:

"3.9. Payments Under Agreement an Operating Expense. Payments under this Agreement shall constitute an operating expense of the Fund payable prior to all bonds, notes or other indebtedness secured by a pledge or assignment of the Trust Estate or payments to the general fund."

(9) Add a new Section J, which shall read as follows:

"3.10. Rate Covenant; No Impairment. In accordance with Section 80134 of the Water Code, Party B covenants that it will, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by Party B pursuant to this Agreement. As provided in Section 80200 of the Water Code, while any obligations of Party B pursuant to this Agreement remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of Party B and the Public Utilities Commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the Seller under this Agreement."

(10) Add a new Section K, which shall read as follows:

"3.11. No More Favorable Terms. Party B shall not provide in any power purchase agreement payable from the Trust Estate for (i) collateral or other security or credit support with respect thereto, (ii) a pledge or assignment of the Trust Estate for the payment thereof, or (iii) payment priority with respect thereto superior to that of Party A, without in each case offering such arrangements to Party A."

(11) Add a new Section L, which shall read as follows:

"3.12. Sources of Payment; No Debt of State. Party B's obligation to make payments hereunder shall be limited solely to the Fund. Any liability of Party B arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or Potential Event of Default or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against Party B hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement."

(12) Add a new Section M, which shall read as follows:

"3.13. Collection Efforts. Party B agrees that it will exercise all rights and use all remedies available to it to collect from retail end use customers all amounts necessary to fund Party B's revenue requirements described in Section 80134 of the Water Code or otherwise owed to Party B for such power."

(13) Add a new Section N, which shall read as follows:

"3.14. No More Favorable Immunity Provision. Party B shall not offer to any other party to a power purchase agreement an immunity provision other than the immunity provision set forth in Section 3.5 without offering such immunity provision to Party A."

(14) Add a new Section O, which shall read as follows:

"3.15. Application of Government Code and the Public Contracts Code. Party A has stated that, because of the administrative burden and delays associated with such requirements, it would not enter into this Agreement if the provisions of the Government Code and the Public Contracts Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Agreement. Accordingly, pursuant to Section 80014(b) of the Water Code, Party B has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement."

(15) Add a new Section P, which shall read as follows:

"3.16. No Circumvention. Party B agrees that it will not use any indirect means (such as including provisions in agreements other than a power purchase agreement) to circumvent or avoid the application of Sections 3.11 and 3.14 and that any such use or attempted use of indirect means to circumvent or avoid the application of Sections 3.11 and

3.14 shall be deemed inclusion of the pertinent provisions in a power purchase agreement payable from the Trust Estate for purposes of Sections 3.11 and 3.14.

(16) Add a new Section Q, which shall read as follows:

“3.17 Effect on Fund. Party B agrees that it will not take any actions with respect to the Fund which could reasonably be expected to materially and adversely affect the ability of Party B to pay and perform all of its obligations under this Agreement, including all Transactions hereunder; provided, however, that any actions taken by Party B or a bond trustee in accordance with the provisions of the resolution or indenture providing for the issuance of the Bonds shall not be considered a breach or violation of this provision.

(17) Add a new Section R, which shall read as follows:

“3.18 Actions With Respect to Section 3.10. In addition to any other remedies available to Party B, Party B may, in its sole discretion, seek to enforce the provisions of Section 3.10 by an action for mandamus or specific performance, and the exercise of such remedy shall not require any demonstration of irreparable injury by Party A or of the inadequacy of a remedy at law.”

[The next page is the signature page.]

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A – Calpine Energy Services, L.P.

Party B – State of California Department of Water Resources

By: _____

By: _____

Name: E. James Macias

Name: Thomas M. Hannigan

Title: Vice President

Title: Director

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
(Long Term Commodity Sale)**

This confirmation letter shall confirm the Transaction agreed to on February 26, 2001 between Calpine Energy Services, L.P. ("Party A") and State of California Department of Water Resources with respect to its responsibilities pursuant to California Water Code Section 80000 *et seq.* regarding the Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System ("Party B") regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: Calpine Energy Services, L.P.

Buyer: State of California Department of Water Resources

Product:

- ☐ Into _____, Seller's Daily Choice
- ☐ Firm (LD)
- ☐ Firm (No Force Majeure)
- ☐ System Firm
(Specify System: _____)
- ☒ Unit Firm
(Specify Unit(s): See "Special Conditions" below.)
- ☐ Other _____
- ☐ Transmission Contingency (If not marked, no transmission contingency)
- | | | |
|---|---------------------------------|--------------------------------|
| <input type="checkbox"/> FT-Contract Path Contingency | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> FT-Delivery Point Contingency | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> Transmission Contingent | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> Other transmission contingency | | |
- (Specify: _____)

Contract Quantity: July 1, 2001 - December 31, 2001: 200 MW

January 1, 2002 - June 30, 2002: 200 MW

July 1, 2002 - December 31, 2011: 1000 MW

(Above Contract Quantities are subject to "Special Conditions" below.)

Delivery Point: Any substation or substations designated by Seller that connect to the transmission system managed by the California Independent System Operator ("ISO") or any successor to the ISO. Seller may schedule one or more different delivery points meeting the foregoing requirements on an hourly basis pursuant to ISO protocols (or any successor protocols).

Contract Price

Energy Price: July 1, 2001 - December 31, 2001: \$115.00 per MWh

January 1, 2002 - December 31, 2011: \$61.00 per MWh

Other Charges: N/A

Delivery Period: July 1, 2001 - December 31, 2011

Special Conditions: (1) See Cover Sheet to Master Agreement.

(2) Seller will supply the energy to be delivered under this Transaction from one or more of the following generation assets (each a "Unit," and together with the replacement generation assets designated as provided below, collectively the "Units"): Otay Mesa, Teayawa, Metcalf and East Altamont. Subject to the provisions of this Transaction confirmation, the terms and conditions relating to the "Unit Firm" Product will apply separately to each Unit and the energy to be supplied from such Unit. Without limiting the generality of the foregoing and subject to the other provisions of this paragraph (2) and the provisions of paragraphs (3) and (4) of these Special Conditions, if a designated Unit is available and can generate energy in compliance with all applicable legal requirements, Seller will supply Buyer the number of MW designated to be supplied from such Unit. On or before June 1, 2001 and June 1, 2002, Seller will designate the Unit or Units that will supply the Contract Quantities required to be delivered beginning July 1, 2001 and July 1, 2002, respectively, and the number of MWs to be supplied from such Unit(s). Seller shall have the right to change the Unit(s) designated hereunder from time to time upon not less than 15 days notice to Buyer so long as (i) Seller has designated sufficient capacity at the designated and replacement Unit(s) to supply the then required Contract Quantity and (ii) the replacement Unit(s) deliver energy into the same zone (e.g. North Path 15) as the original Unit. Seller shall also have the right (but not the obligation) to supply energy to Buyer under this Transaction from generation assets other than the designated Unit(s) or from energy purchased by Seller in the market, provided that the energy from such alternative generation assets or the market is delivered into the same zone(s) as it would have been from the designated Unit(s).

(3) Seller's obligations hereunder with respect to the energy to be supplied from any Unit are also subject to and contingent on such Unit having achieved "commercial operation" before Seller is obligated to supply energy from such Unit. (As used herein, "commercial operation" means that such Unit has been completed, has passed all applicable performance tests and is capable of operating on a sustained basis at the output level for which it was designed.) Seller agrees to use commercially reasonable efforts (considering among other things the availability, receipt and cost of necessary permits and regulatory approvals, third party services and consents, real estate rights and similar matters and regulatory changes) to cause the designated Unit(s) to achieve commercial operation on or before the date(s) that power is to be supplied by such Unit(s) hereunder, but Seller shall not otherwise be liable to Buyer or be obligated to provide the quantity of energy to be provided from such Unit(s) unless and until commercial operation is achieved for such Unit(s), and the Contract Quantities described above shall be appropriately reduced until such Unit(s) achieve commercial operation.

(4) Seller agrees that it will operate and maintain the Units in accordance with Prudent Industry Practices (as hereinafter defined). As used herein, "Prudent Industry Practices" means those practices, methods and acts engaged in or approved by a significant portion of the independent electric power industry which, in the exercise of reasonable judgment at the time the decision was made, would reasonably have been expected to achieve the desired results consistent with good business practices, reliability criteria, safety considerations and expediency; provided, however, that Prudent Industry Practices is not limited to any particular practice or practices, but instead includes a range of acceptable practices methods and acts.

(5) In the event that the output of a designated Unit is partially reduced or curtailed for any reason, including Forced Outage or Force Majeure, Seller shall be entitled to reduce energy deliveries to Buyer from such Unit on a pro rata basis in the proportion that the Contract Quantity designated to be supplied from such Unit bears to the total capacity of such Unit.

(6) Metering shall conform to ISO standards or the equivalent. Any generation meter multiplier (GMM) adjustments shall be for Buyer's account (i.e. notwithstanding any required GMM adjustments, Seller shall be deemed to have delivered the full metered amount of energy from each Unit).

Scheduling: Conforming to ISO and WSCC standards.

Option Buyer: N/A

Option Seller: N/A

Type of Option: N/A

Strike Price: N/A

Premium: N/A

Exercise Period: N/A

[The next page is the signature page.]

This confirmation letter is being provided pursuant to and in accordance with the Amended and Restated Master Power Purchase and Sale Agreement dated February 26, 2001 (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

Calpine Energy Services, L.P.

State of California Department of Water Resources
separate and apart from its powers and
responsibilities with respect to the State Water Resources
Development System

By: _____

Name: E. James Macias

Title: Vice President

Phone No: (925) 600-2306

Fax: (925) 600-8925

By: _____

Name: Thomas M. Hannigan

Title: Director

Phone No: (916) 653-7007

Fax: (916) 653-0943

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
(Peaking Capacity)**

This confirmation letter shall confirm the Transaction agreed to on February 27, 2001 between Calpine Energy Services, L.P. ("Party A") and State of California Department of Water Resources with respect to its responsibilities pursuant to California Water Code Section 80000 *et seq.* regarding the Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System ("Party B") regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: Calpine Energy Services, L.P.

Buyer: State of California Department of Water Resources

Product:

- ☐ Into _____, Seller's Daily Choice
- ☐ Firm (LD)
- ☐ Firm (No Force Majeure)
- ☐ System Firm
(Specify System: _____)
- ☒ Unit Firm – See "Special Conditions" below.
(Specify Unit(s): See "Special Conditions" below.)
- ☐ Other _____
- ☐ Transmission Contingency (If not marked, no transmission contingency)
- | | | |
|---|---------------------------------|--------------------------------|
| <input type="checkbox"/> FT-Contract Path Contingency | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> FT-Delivery Point Contingency | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> Transmission Contingent | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> Other transmission contingency | | |
- (Specify: _____)

Contract Quantity: August 1, 2001 - November 30, 2001: 90 MW

December 1, 2001 - February 28, 2002: 135 MW

March 1, 2002 - March 31, 2002: 225 MW

April 1, 2002 - April 30, 2002: 360 MW

May 1, 2002 - July 31, 2002: 450 MW

August 1, 2002 - July 31, 2021: 495 MW

(Above Contract Quantities are subject to "Special Conditions" below.)

Delivery Point: Any substation or substations in North Path 15 designated by Seller that connect to the transmission system managed by the California Independent System Operator ("ISO") or any successor to the ISO. Seller may schedule one or more different delivery points meeting the foregoing requirements on an hourly basis pursuant to ISO protocols (or any successor protocols).

Contract Price

Energy Price: \$73.00 per MWh

Other Charges: The annual capacity payment payable for the period from August 1, 2001 through July 31, 2006 (i.e. the first 5 years of the Delivery Period) will be \$90,000,000, and the annual capacity payment for the remainder of the Delivery Period (beginning August 1, 2006) will be \$80,000,000. Buyer shall pay Seller an annual capacity payment on each August 1 of the Delivery Period, except that during the first year of the Delivery period (i.e. from August 1, 2001 through July 31, 2002), Buyer will make monthly capacity payments. The monthly capacity payment during the first year of the Delivery period shall be equal to the product of (i) \$90,000,000 times (ii) 1/12 times (iii) the quotient of (A) the greater of the capacity (in MW) of the Units (as hereinafter defined) which have achieved commercial operation as of the first day of such month or the capacity (in MW) that Seller otherwise commits (at least 5 days prior to the first day of such month) to supply to Buyer for such month, divided by (B) 495 MW.

Delivery Period: August 1, 2001 - July 31, 2021

Special Conditions: (1) See Cover Sheet to Master Agreement.

(2) Seller will supply energy to be delivered under this Transaction from one or more generation assets (each a "Unit," collectively, and together with the replacement generation assets designated as provided below, the "Units") located at one or more of the following power plants owned by affiliates of Seller: Greenleaf Two, King City, Watsonville and Gilroy. Each Unit will have a nominal capacity of 45 MW, and a total of 11 Units will be designated as provided herein. Not less than 15 days before the date of each increase in Contract Quantity described above, Seller will designate the Unit or Units that will supply the Contract Quantities required to be delivered by such dates. Seller shall have the right to change the Unit(s) designated hereunder from time to time upon not less than 15 days notice to Buyer so long as (i) Seller has designated sufficient Unit(s) to supply the then required Contract Quantity and (ii) the replacement Unit(s) deliver energy into the same zone (e.g. North Path 15) as the original Unit. Seller shall also have the right (but not the obligation) to supply energy to Buyer under this Transaction from generation assets delivering energy into North Path 15 other than the designated Unit(s) or from energy purchased by Seller in the market, provided that the energy from such alternative generation assets or the market is delivered into the same zone as it would have been from the designated Unit(s).

(3) Seller's obligations hereunder with respect to the energy to be supplied from any Unit are also subject to and contingent on such Unit having achieved "commercial operation" before Seller is obligated to supply energy from such Unit. (As used herein, "commercial operation" means that such Unit has been completed, has passed all applicable performance tests and is capable of operating on a sustained basis at the output level for which it was designed.) Seller agrees to use commercially reasonable efforts (considering among other things the availability, receipt and cost of necessary permits and regulatory approvals, third party services and consents, real estate rights and similar matters and regulatory changes) to cause the designated Unit(s) to achieve commercial operation on or before the date(s) that power is to be supplied by such Unit(s) hereunder, but Seller shall not otherwise be liable to Buyer or be obligated to provide the quantity of energy to be provided from such Unit(s) unless and until commercial operation is achieved for such Unit(s), and the Contract Quantities described above shall be appropriately reduced until such Unit(s) achieve commercial operation.

(4) The terms and conditions relating to the "Unit Firm" Product will apply separately to each Unit and the energy to be supplied from such Unit until 6 months after such Unit has achieved commercial operation. Thereafter, the terms and conditions relating to the "Firm (LD)" Product will apply to such Unit and the energy to be supplied from such Unit.

(5) Seller shall only be required to deliver the energy described in this Transaction if Buyer schedules energy from the Units as provided herein. Subject to the terms and conditions set forth herein, Buyer may schedule such energy only for hours within the Peak Period (as hereinafter defined) and only up to the lesser of (a) the then applicable Contract Quantity and (b) the number of Units that have at that time achieved commercial operation multiplied by 45 MW; provided, however, that the quantity of energy which is scheduled must be an amount which will permit all Units required to supply such amount to operate between 80% and 100% of capacity (i.e. between 36 MW and 45 MW). As used herein, "Peak Period" means the hours from 0700 through 2200, Pacific time, Monday through Saturday, during the months of June, July, August, September, October, December and January during the Delivery Period. Each Peak Period will begin on June 1 of a given calendar year and end on January 31 of the following calendar year.

(6) In the event that, during the period described in subsection (4) of these Special Conditions that a Unit is providing the "Unit Firm" Product, the output of a designated Unit is partially reduced or curtailed for any reason, including Forced Outage or Force Majeure, Seller shall be entitled to reduce energy deliveries to Buyer from such Unit to the extent of such reduction or curtailment.

(7) Metering shall conform to ISO standards or the equivalent. Any generation meter multiplier (GMM) adjustments shall be for Buyer's account (i.e. notwithstanding any required GMM adjustments, Seller shall be deemed to have delivered the full metered amount of energy from each Unit).

Scheduling: Conforming to ISO and WSCC standards. Subject to the other terms and conditions of this Transaction, Buyer shall be entitled to schedule up to 2000 Scheduled Hours (as hereinafter defined) during each Peak Period during the Delivery Period; provided, however, that, because the Delivery Period begins during a Peak Period, Buyer shall have the right to schedule up to the Prorated Amount (as hereinafter defined) of 2000 Scheduled Hours during the first Peak Period hereunder (which occurs between August 1, 2001 and January 31, 2002). Buyer's right to schedule energy during a Peak Period may not be carried forward or backward between Peak Periods (i.e. Scheduled Hours which are not scheduled in one Peak Period may not be carried forward into the next Peak Period, and Buyer may not schedule Scheduled Hours in excess of the foregoing quantities in a Peak Period by "borrowing" them from future Peak Periods). All energy scheduled from a Unit must be scheduled in minimum 4 hour flat blocks. All energy shall be scheduled on a day-ahead basis; provided, however, that Buyer may schedule up to 500 Scheduled Hours during each Peak Period during the Delivery Period on 10 minutes notice (or, if the ISO or its successor does not allow scheduling on 10 minutes notice without incurring special charges in excess of ordinary scheduling fees, the shortest notice period greater than 10 minutes that the ISO or its successor will allow without the payment of special charges); provided, however, that, because the Delivery Period begins during a Peak Period, Buyer shall have the right to schedule up to the Prorated Amount of 500 Scheduled Hours during the first Peak Period hereunder (which occurs between August 1, 2001 and January 31, 2002). As used herein, "Scheduled Hour" means each hour for which energy is scheduled to be delivered hereunder, whether the energy is supplied from one or more of the designated Units or from other generation assets or the market as permitted under paragraph (2) of Special Conditions, and

“Prorated Amount” means a fraction, the numerator of which is the number of months remaining in the first Peak Period (which occurs between August 1, 2001 and January 31, 2002) after the first Unit achieves commercial operation and the denominator of which is 7 months.

Option Buyer: N/A

Option Seller: N/A

Type of Option: N/A

Strike Price: N/A

Premium: N/A

Exercise Period: N/A

[The next page is the signature page.]

This confirmation letter is being provided pursuant to and in accordance with the Amended and Restated Master Power Purchase and Sale Agreement dated February 26, 2001 (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

Calpine Energy Services, L.P.

State of California Department of Water Resources
separate and apart from its powers and
responsibilities with respect to the State Water Resources
Development System

By: _____

Name: E. James Macias

Title: Vice President

Phone No: (925) 600-2306

Fax: (925) 600-8925

By: _____

Name: Thomas M. Hannigan

Title: Director

Phone No: (916) 653-7007

Fax: (916) 653-0943

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
(Peaking Capacity)**

This confirmation letter shall confirm the Transaction agreed to on June 14, 2001 between Calpine Energy Services, L.P. ("Party A") and State of California Department of Water Resources with respect to its responsibilities pursuant to California Water Code Section 80000 *et seq.* regarding the Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System ("Party B") regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: Calpine Energy Services, L.P.

Buyer: State of California Department of Water Resources

Product:

- ☐ Into _____, Seller's Daily Choice
- ☐ Firm (LD)
- ☐ Firm (No Force Majeure)
- ☐ System Firm
(Specify System: _____)
- ☒ Unit Firm – See "Special Conditions" below.
(Specify Unit(s): See "Special Conditions" below.)
- ☐ Other _____
- ☐ Transmission Contingency (If not marked, no transmission contingency)
- | | | |
|---|---------------------------------|--------------------------------|
| <input type="checkbox"/> FT-Contract Path Contingency | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> FT-Delivery Point Contingency | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> Transmission Contingent | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> Other transmission contingency | | |
- (Specify: _____)

Contract Quantity: The Contract Quantity shall be determined monthly throughout the Delivery Period (as defined below) as follows:

from SSCOD until CCCOD, the sum of the Contract Quantity for each Unit, as determined pursuant to Special Condition 9, and expected to be 180 MW;

from CCCOD until the end of the Delivery Period, the sum of the Contract Quantity for each Unit, as determined pursuant to Special Condition 9, and expected to be 225 MW;

where "SSCOD" means the later of May 1, 2002 or the date by which the Initial Designated Units ("IDUs", as defined in "Special Conditions" below) that will achieve "commercial operation" (as defined in "Special Conditions" below) in simple cycle have achieved commercial operation in simple cycle; and

where "CCCOD" means the earlier of (i) the date on which the IDUs that achieved commercial operation in simple cycle have achieved commercial operation in combined cycle or (ii) July 1, 2003.

Delivery Point: With respect to the initial designated Units, the Nortech substation located in the City of San Jose, and with respect to replacement Units, any substation or substations in North Path 15 designated by Seller. The Delivery Point shall be a point that connects to the transmission system managed by the California Independent System Operator ("ISO") or any successor to the ISO. Seller may schedule one or more different delivery points meeting the foregoing requirements on an hourly basis pursuant to ISO protocols (or any successor protocols). (See "Special Conditions" below)

Contract Price:

Energy Price:

For each month, Buyer shall pay Seller the Monthly Fuel Costs as follows (negative Monthly Fuel Costs reflect a payment due from Seller to Buyer resulting from an excessive heat rate and Buyer-supplied fuel):

Monthly Fuel Costs:

Gross Fuel Costs x Heat Rate Factor

Gross Fuel Costs = Monthly Fuel Quantity x Monthly Fuel Price

Monthly Fuel Quantity = Monthly metered usage of gas (Mmbtu) for the Unit(s) to generate power scheduled by Buyer in accordance with the "Special Conditions" below, plus equivalent gas at the Guaranteed Heat Rate for any replacement energy, including ISO imbalance energy. Such monthly metered usage of gas shall be determined based on the ratio of 1) the actual output of the Unit(s) to supply Buyer's scheduled energy (but not any energy generated in excess of Buyer's hourly schedules) to 2) the actual total output of the Unit(s).

Monthly Fuel Price = Gas cost (\$/Mmbtu) as determined under either the Seller Fuel Plan or the Buyer Fuel Plan, as applicable

Heat Rate Factor:

Under a Seller Fuel Plan:

Minimum of: 1.0, and (Guaranteed Heat Rate/Monthly Effective Heat Rate)

Under a Buyer Fuel Plan:

[Minimum of: 1.0, and (Guaranteed Heat Rate/Monthly Effective Heat Rate)]-1

Guaranteed Heat Rate = 10,500 Btu/kWh during simple cycle, and
8,500 Btu/kWh after CCCOD

Monthly Effective Heat Rate = (Monthly Fuel Quantity/Monthly Scheduled Energy)

Monthly Scheduled Energy = Total energy during a month scheduled by Buyer in accordance with "Special Conditions" for delivery by Seller from Unit(s) on Buyer's account

Other Charges:

Subject to "Special Conditions" below, a monthly capacity charge calculated as follows:

During the first Contract Year: \$22 per kW/month multiplied by the Contract Quantity that month;

During the second Contract Year: \$20 per kW/month multiplied by the Contract Quantity that month; and

During the third Contract Year: \$18 per kW/month multiplied by the Contract Quantity for that month

where "Contract Year" is any 12 month period ending on an anniversary of SSCOD.

A charge of \$4/MWh for Variable O&M shall be applied to the Monthly Scheduled Energy.

Fuel Plan: By January 1, 2002, and thereafter each year three months before the anniversary of the SSCOD, Seller shall provide to Buyer a proposed Annual Fuel Plan detailing prices or pricing methodologies for the acquisition of fuel by Seller on Buyer's account for the next Contract Year. By February 1, 2002, and thereafter each year two months before the anniversary of the SSCOD, Buyer shall notify Seller if Buyer accepts Seller's proposed Annual Fuel Plan (or a negotiated revision thereto). If such a plan is accepted, it shall become a Seller Fuel Plan for the acquisition of fuel by Seller on Buyer's account. If no Seller Fuel Plan is accepted, Buyer shall acquire fuel on its own account pursuant to a Buyer Fuel Plan. In that event, Buyer shall be solely responsible for gas supply, gas must be delivered to Calpine at the PG&E City Gate or other mutually agreed upon point, Buyer shall be solely responsible for any local distribution company charges incurred to deliver that gas to the Units, and Seller shall have no obligations to deliver gas or to deliver energy where Buyer fails to deliver the required gas. Any fuel imbalance charges resulting under either a Seller Fuel Plan or a Buyer Fuel Plan shall be borne by the party to which the fuel imbalances are attributable. Fuel imbalance charges resulting from Force Majeure in respect of the Units shall be divided equally between Buyer and Seller. Seller shall be solely responsible to acquire and pay for any and all gas used to generate energy other than Buyer's scheduled energy.

Delivery Period: SSCOD until the 3rd anniversary thereof.

Special Conditions: (1) See Cover Sheet to Master Agreement.

(2) Seller will supply energy to be delivered under this Transaction from one or more generation assets (each a "Unit," collectively, and together with the replacement generation assets designated as provided below, the "Units") located at one or more power plants owned by affiliates of Seller. In simple cycle, a Unit is a single LM 6000. In combined cycle, a Unit is a single LM 6000 and associated steam turbine. The Initial Designated Units will be four Units, each with a nominal capacity of 45 MW in simple cycle and 56.25 MW in combined cycle, to be installed at the US DataPort North San Jose Project (or any successor project). If and to the extent that Seller is experiencing availability problems with the designated Unit(s) due to Forced Outage or Force Majeure, or the US DataPort North San Jose Project (or any successor project) requires power, Seller shall have the right to change the Unit(s) designated hereunder from time to time upon not less than 15 days notice to Buyer so long as: (i) Seller has designated sufficient Unit(s) to supply the then required Contract Quantity; (ii) the replacement Unit(s) deliver energy into the same zone (e.g. North Path 15) as the original Unit; (iii) such replacement Unit(s) shall be designated hereunder for no longer than the duration of the Forced Outage or Force Majeure affecting the original Unit(s) or the power needs of the US DataPort North San Jose Project; and (iv) to the extent Seller can choose from different Units in making the designation, in the notice to Buyer the Seller shall advise Buyer of the Options and up to 5 days prior to the expiry of the notice period, Buyer by notice to Seller must select from one of the Options. "Options" means an ordered list of available capacity from other Seller generating assets. If and to the extent that Seller is experiencing availability problems with the designated Units due to Forced Outage or Force Majeure, or the US DataPort North San Jose Project requires power, Seller shall also have the right (but not the obligation) to supply energy to Buyer under this Transaction from generation assets delivering energy into North Path 15 other than the designated Unit(s) or from energy purchased by Seller in the market, provided that the energy from such alternative generation assets or the market is delivered into the same zone as it would have been from the designated Unit(s), subject to provisos (i) through (iv) above.

(3) Seller's obligations hereunder with respect to the energy to be supplied from any Unit are also subject to and contingent on such Unit having achieved "commercial operation" before Seller is obligated to supply energy from such Unit. Buyer's obligations hereunder with respect to capacity and energy to be received from any Unit are subject to and conditioned on such Unit having achieved "commercial operation" before Buyer's obligations to receive energy from such Unit. If, for reasons other than Force Majeure, one or more, but not all, of the initial 4 Units has achieved commercial operation in simple cycle by the "SSCOD Deadline Date", Buyer may, on notice to Seller within 15 days after the SSCOD Deadline Date, delete the designated Unit(s) that has not achieved commercial operation and there shall be no replacement of that designated Unit. As used herein, "SSCOD Deadline Date" means July 1, 2002 unless prior to that date, Seller commits in writing to Buyer to make available on a "Firm L/D" basis 180 MW until the earlier of October 1, 2002 or SSCOD, in which case the SSCOD Deadline Date shall be October 1, 2002 and the price for the "Firm L/D" supply shall be the Contract Price as if SSCOD had occurred and using the Guaranteed Heat Rate. If, for reasons other than Force Majeure, none of the initial 4 Units has achieved commercial operation in simple cycle by the SSCOD Deadline Date, Buyer may, on notice to Seller within 15 days after the SSCOD Deadline Date, terminate this Transaction. (As used herein, "commercial operation" means that such Unit has been completed, has passed all applicable performance tests and is capable of operating on a sustained basis at the output level for which it was designed and shall include reestablishment of commercial operation after

the conversion of one or more Units from simple cycle to combined cycle operation). Seller agrees to use commercially reasonable efforts (considering among other things the availability, receipt and cost of necessary permits and regulatory approvals, third party services and consents, real estate rights and similar matters and regulatory changes) to cause the initial 4 designated Unit(s) to achieve commercial operation in simple cycle by May 1, 2002, but Seller shall not otherwise be liable to Buyer or be obligated to provide the quantity of energy to be provided from such Unit(s) unless and until commercial operation is achieved for such Unit(s).

(4) The terms and conditions relating to the "Unit Firm" Product will apply separately to each Unit and the energy to be supplied from such Unit.

(5) Seller shall only be required to deliver the energy described in this Transaction if Buyer schedules energy from the Units as provided herein. Subject to the terms and conditions set forth herein, Buyer may schedule such energy only for hours within the Peak Period (as hereinafter defined) and only up to the then applicable Contract Quantity; provided, however, that the quantity of energy which is scheduled must be an amount which will permit all Units necessary to supply such amount to operate between 80% and 100% of capacity and otherwise comply with the ramp times, minimum run times, shut down times and other operating specifications of the manufacturer. As used herein, "Peak Period" means the hours from the hour ending at 0700 through to the hour ending at 2200, Pacific Time, Monday through Saturday, excluding NERC holidays, during the Delivery Period.

(6) In the event that the output of a designated Unit is partially reduced or curtailed for any reason, including a Forced Outage or Force Majeure event, Seller shall be entitled to reduce energy deliveries to Buyer from such Unit to the extent of such reduction or curtailment, and such Unit may not be scheduled until such event ends.

(7) Metering shall conform to ISO standards or the equivalent. Any generation meter multiplier (GMM) adjustments shall be for Buyer's account (i.e. notwithstanding any required GMM adjustments, Seller shall be deemed to have delivered the full metered amount of energy from each Unit).

(8) After the end of each month, the capacity payment paid or payable that month shall be adjusted (by Buyer making an additional payment or Seller paying a rebate) to equal the Adjusted Capacity Payment (ACP).

Where:

$$ACP = [1 + (EA - \text{Target EA}) \times \text{capacity payment paid or payable}]$$

$$EA = \frac{(\text{Summation of Hourly Availability Factors for Non-Force Majeure Peak Hours})}{(\# \text{ of Non-Force Majeure Peak Hours in month})}$$

Hourly Availability Factor is determined for each Peak Hour that is not excused by Force Majeure as follows:

- i) For hours in which Buyer has scheduled energy, the quotient of 1) energy actually delivered by Seller to Buyer from the Unit(s) (excluding replacement energy not required due to the power needs of the US DataPort North San Jose Project (or

any successor project)) plus, if a Buyer Fuel Plan is in effect, any scheduled energy that was undeliverable solely due to the non-delivery of gas, divided by 2) total scheduled energy;

- ii) For hours in which Buyer has not scheduled energy, the quotient of 1) Contract Quantity that was actually schedulable for delivery, divided by 2) Contract Quantity.

Target EA = .98 for the Summer Season or .92 for the Winter Season.

The Summer Season is the Peak Period of the months June through October. The Winter Season is the Peak Period of the months November through May. Peak Hours are any hours in the Peak Period.

(9) The Contract Quantity for each Unit for purposes of determining the capacity payment will be established by testing and adjustment as follows: Not less than five days prior to SSCOD, and thereafter during the period beginning April 1 and ending April 30 in each Contract Year, Seller will conduct a four hour performance test of each Unit during operations using installed instrumentation, calibrated by Seller (except the Electric Metering Equipment which will be calibrated in accordance with CAISO Requirements) to determine the maximum MW output of each Unit as measured at the Delivery Point for such Unit. In addition, each of Buyer and Seller may request up to two additional tests per year (at any time) utilizing the same four hour test procedures. After each test, Seller will use performance curves certified by the original equipment manufacturer/architect engineer/vendor to adjust the test results to ISO Conditions. The ISO Condition-adjusted test results will be the "Contract Quantity" for the Unit, effective on the first day of the month following the month in which Buyer receives written notice of the test results, excepting the test results for SSCOD which shall be effective on SSSCOD. Seller will provide forty-eight (48) hours notice to Buyer prior to each test, and provide Buyer with written notice of the test results and subsequent adjustment to the Contract Quantity within the later of five (5) Business Days of each test or as soon as practicable. Buyer is entitled to witness any test of a Unit. Buyer may request third party calibration of instrumentation used in any test, and in the event that a deviation equal to or more than 2% is found, Seller shall bear the cost of such calibration, and if the instrumentation is within 2% deviation then Buyer shall bear such cost.

(10) Notwithstanding anything to the contrary herein, Seller shall arrange and be responsible for transmission service to the Delivery Point, if any, and shall obtain Schedule Coordinator services necessary to deliver the Product to the Delivery Point. Seller shall be responsible for all charges due to the CAISO, and entitled to receive all payments from the CAISO related to deviations.

(11) Scheduling shall conform to ISO and WSCC standards. Subject to the other terms and conditions of this Transaction, Buyer shall be entitled to schedule up to 4000 Scheduled Hours (as hereinafter defined) during the Peak Period of each Contract Year during the Delivery Period. Buyer's right to schedule energy during a Contract Year may not be carried forward or backward between Contract Years (i.e. Scheduled Hours which are not scheduled in one Contract Year may not be carried forward into the next Contract Year, and Buyer may not schedule Scheduled Hours in excess of the foregoing quantities in a Contract Year by "borrowing" them from a future Contract Year). All energy scheduled from a Unit must be scheduled in minimum 4 hour flat blocks. Buyer may

only schedule energy that can be scheduled with and deemed delivered by the ISO or its successor. All energy shall be scheduled on a day-ahead basis at least 60 minutes prior to the day ahead scheduling deadline of the ISO or its successor; provided, however, that Buyer may schedule up to 1000 Scheduled Hours during each Contract Year during the Delivery Period on 10 minutes notice (or, if the ISO or its successor does not allow scheduling on 10 minutes notice without incurring special charges in excess of ordinary scheduling fees, the shortest notice period greater than 10 minutes that the ISO or its successor will allow without the payment of special charges); As used herein, "Scheduled Hour" means each hour for which energy is scheduled to be delivered hereunder, whether the energy is supplied from one or more of the designated Units or from other generation assets or the market as permitted under paragraph (2) of Special Conditions. Notwithstanding the foregoing, Seller shall have the right, upon not less than 15 days' notice to Buyer, to designate one period (not to exceed two weeks in duration) during the Delivery Period during which Buyer may not schedule any Scheduled Hours, and such period shall be deemed time under Force Majeure. If, for any reason, the energy actually delivered differs from the energy scheduled by Buyer pursuant hereto, the Parties will cooperate in making a scheduling adjustment as soon as practical in accordance with the procedures of the ISO or its successor.

(12) For the purposes of this Confirmation Letter only, the deadline specified under (i) in the third sentence of Section 3.7 of the Master Power Purchase and Sale Agreement made as of February 6, 2001 between Buyer and Seller, as that section was added in the Amended and Restated Cover Sheet, is hereby changed from July 1, 2001 to October 31, 2001.

(13) For the purposes of this Confirmation Letter only, Section 9.2 of the Master Power Purchase and Sale Agreement made as of February 6, 2001 between Buyer and Seller, as Amended and Restated, is hereby replaced with the following:

"Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges, which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges, which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

Seller shall be entitled to pass through to Buyer any liability, loss, cost, damage and expense, including gross-up, arising out of a tax or other imposition enacted by the California state legislature after the date of this Agreement that is not of general applicability and is instead directed at the generation, sale, purchase, ownership and/or transmission of electric power, natural gas and/or other utility or energy goods and services. Buyer shall be entitled to the benefit of a reduction of or credit with respect to any such tax or other imposition enacted by the California state legislature after the date of this Agreement."

(14) For purposes of this Confirmation Letter only, the box marked “Confidentiality Applicable” under the heading Article 10 on the Amended and Restated Cover Sheet for the Master Power Purchase and Sale Agreement made as of February 6, 2001 between Buyer and Seller, shall be deemed to be not checked, thereby eliminating the applicability of Section 10.11 of the Master Agreement and making Other Change “(m)” of the Cover Sheet moot.

Option Buyer: N/A

Option Seller: N/A

Type of Option: N/A

Strike Price: N/A

Premium: N/A

Exercise Period: N/A

This confirmation letter is being provided pursuant to and in accordance with the Amended and Restated Master Power Purchase and Sale Agreement dated February 26, 2001 (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

Calpine Energy Services, L.P.

State of California Department of Water Resources
separate and apart from its powers and
responsibilities with respect to the State Water Resources
Development System

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